



February 26, 2016

ENGROSSED SENATE BILL No. 183

DIGEST OF SB 183 (Updated February 24, 2016 4:27 pm - DI 69)

Citations Affected: IC 35-43.

Synopsis: Real property offenses. Amends the statute concerning criminal trespass to specify that a person commits criminal trespass if the person knowingly or intentionally enters or refuses to leave the real property of another person after having been prohibited from entering or asked to leave the real property by a law enforcement officer when the real property is: (1) vacant real property or a vacant structure (both as defined by the statute concerning the abatement of vacant structures and abandoned structures); or (2) designated by a municipality or county enforcement authority to be abandoned property or an abandoned structure. Provides that a person who knowingly or intentionally damages, defaces, or permanently removes an object from real property that is the subject of a mortgage foreclosure proceeding commits foreclosure mischief, a Class B misdemeanor. Increases the penalty to a Class A misdemeanor if the damage caused is between \$750 and \$50,000, and to a Level 6 felony if the damage caused is \$50,000 or more. Establishes a defense if the damage, removal, or defacement was the result of repair, renovation, replacement, or maintenance performed in good faith.

Effective: July 1, 2016.

**Bray, Steele, Tomes, Tallian, Raatz,
Holdman**

(HOUSE SPONSORS — PRICE, GIAQUINTA)

January 6, 2016, read first time and referred to Committee on Corrections & Criminal Law.
January 13, 2016, amended, reported favorably — Do Pass.
January 19, 2016, read second time, ordered engrossed. Engrossed.
January 21, 2016, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

February 9, 2016, read first time and referred to Committee on Courts and Criminal Code.
February 25, 2016, amended, reported — Do Pass.

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February 26, 2016

Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 183

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-43-2-2, AS AMENDED BY P.L.21-2014,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 2. (a) As used in this section, "authorized person"
4 means a person authorized by an agricultural operation to act on behalf
5 of the agricultural operation.

6 (b) A person who:

7 (1) not having a contractual interest in the property, knowingly or
8 intentionally enters the real property of another person after
9 having been denied entry by the other person or that person's
10 agent;

11 (2) not having a contractual interest in the property, knowingly or
12 intentionally refuses to leave the real property of another person
13 after having been asked to leave by the other person or that
14 person's agent;

15 (3) accompanies another person in a vehicle, with knowledge that
16 the other person knowingly or intentionally is exerting
17 unauthorized control over the vehicle;

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(4) knowingly or intentionally interferes with the possession or use of the property of another person without the person's consent;

(5) not having a contractual interest in the property, knowingly or intentionally enters the:

(A) property of an agricultural operation that is used for the production, processing, propagation, packaging, cultivation, harvesting, care, management, or storage of an animal, plant, or other agricultural product, including any pasturage or land used for timber management, without the consent of the owner of the agricultural operation or an authorized person; or

(B) dwelling of another person without the person's consent;

(6) knowingly or intentionally:

(A) travels by train without lawful authority or the railroad carrier's consent; and

(B) rides on the outside of a train or inside a passenger car, locomotive, or freight car, including a boxcar, flatbed, or container without lawful authority or the railroad carrier's consent;

(7) not having a contractual interest in the property, knowingly or intentionally enters or refuses to leave the property of another person after having been prohibited from entering or asked to leave the property by a law enforcement officer when the property is:

(A) vacant **real property (as defined in IC 36-7-36-5) or a vacant structure (as defined in IC 36-7-36-6);** or

(B) designated by a municipality or county enforcement authority to be abandoned property or an abandoned structure (as defined in IC 36-7-36-1);

(8) not having a contractual interest in the property, knowingly or intentionally enters the real property of an agricultural operation (as defined in IC 32-30-6-1) without the permission of the owner of the agricultural operation or an authorized person, and knowingly or intentionally engages in conduct that causes property damage to:

(A) the owner of or a person having a contractual interest in the agricultural operation;

(B) the operator of the agricultural operation; or

(C) a person having personal property located on the property of the agricultural operation; or

(9) knowingly or intentionally enters the property of another person after being denied entry by a court order that has been issued to the person or issued to the general public by



conspicuous posting on or around the premises in areas where a person can observe the order when the property has been designated by a municipality or county enforcement authority to be a vacant property, an abandoned property, or an abandoned structure (as defined in IC 36-7-36-1);

commits criminal trespass, a Class A misdemeanor. However, the offense is a Level 6 felony if it is committed on a scientific research facility, on a key facility, on a facility belonging to a public utility (as defined in IC 32-24-1-5.9(a)), on school property, or on a school bus or the person has a prior unrelated conviction for an offense under this section concerning the same property. The offense is a Level 6 felony, for purposes of subdivision (8), if the property damage is more than seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000). The offense is a Level 5 felony, for purposes of subdivision (8), if the property damage is at least fifty thousand dollars (\$50,000).

(c) A person has been denied entry under subsection (b)(1) when the person has been denied entry by means of:

- (1) personal communication, oral or written;
- (2) posting or exhibiting a notice at the main entrance in a manner that is either prescribed by law or likely to come to the attention of the public; or
- (3) a hearing authority or court order under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36.

(d) A law enforcement officer may not deny entry to property or ask a person to leave a property under subsection (b)(7) unless there is reasonable suspicion that criminal activity has occurred or is occurring.

(e) A person described in subsection (b)(7) violates subsection (b)(7) unless the person has the written permission of the owner, **the** owner's agent, **an** enforcement authority, or **a** court to come onto the property for purposes of performing maintenance, repair, or demolition.

(f) A person described in subsection (b)(9) violates subsection (b)(9) unless the court that issued the order denying the person entry grants permission for the person to come onto the property.

(g) Subsections (b), (c), and (f) do not apply to the following:

- (1) A passenger on a train.
- (2) An employee of a railroad carrier while engaged in the performance of official duties.
- (3) A law enforcement officer, firefighter, or emergency response personnel while engaged in the performance of official duties.
- (4) A person going on railroad property in an emergency to rescue a person or animal from harm's way or to remove an object that the person reasonably believes poses an imminent threat to life or



limb.

(5) A person on the station grounds or in the depot of a railroad carrier:

(A) as a passenger; or

(B) for the purpose of transacting lawful business.

(6) A:

(A) person; or

(B) person's:

(i) family member;

(ii) invitee;

(iii) employee;

(iv) agent; or

(v) independent contractor;

going on a railroad's right-of-way for the purpose of crossing at a private crossing site approved by the railroad carrier to obtain access to land that the person owns, leases, or operates.

(7) A person having written permission from the railroad carrier to go on specified railroad property.

(8) A representative of the Indiana department of transportation while engaged in the performance of official duties.

(9) A representative of the federal Railroad Administration while engaged in the performance of official duties.

(10) A representative of the National Transportation Safety Board while engaged in the performance of official duties.

SECTION 2. IC 35-43-4-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 9. (a) This section applies only to real property in foreclosure.**

(b) The following definitions apply throughout this section:

(1) "Damages, permanently removes an object from, or defaces real property" means to damage, permanently remove, or deface one (1) or more of the following:

(A) Fixtures (as defined in IC 26-1-2.1-309) of the real property.

(B) A component or subsystem of the heating, ventilation, or air conditioning system of the real property.

(C) Wiring of the real property.

(D) Pipes, fittings, or another part of the plumbing system of the real property.

(E) The structure, including the roof and foundation, of the real property.

(F) The windows of the real property.



- 1 (G) The floors, ceilings, walls, or doors of the real
- 2 property.
- 3 (H) The landscaping of the real property.
- 4 (I) An unattached structure, carport, patio, fence, or
- 5 swimming pool located on the real property.
- 6 (2) "Real property in foreclosure" means real property with
- 7 respect to which a foreclosure action has been filed or joined
- 8 by a person having a security interest in the property that is
- 9 used to secure:
- 10 (A) a mortgage;
- 11 (B) a land contract; or
- 12 (C) another agreement similar to a mortgage or a land
- 13 contract.
- 14 The term does not include property that is the subject of a
- 15 foreclosure action brought by a person having any other type
- 16 of security interest in the property, including a mechanic's
- 17 lien, a tax lien, or a lien placed by a homeowners association,
- 18 unless the property is also the subject of a foreclosure action
- 19 described in clauses (A) through (C).
- 20 (c) A person who knowingly or intentionally damages,
- 21 permanently removes an object from, or defaces real property in
- 22 foreclosure commits foreclosure mischief, a Class B misdemeanor.
- 23 However, the offense is:
- 24 (1) a Class A misdemeanor if the pecuniary loss is at least
- 25 seven hundred fifty dollars (\$750) but less than fifty thousand
- 26 dollars (\$50,000); and
- 27 (2) a Level 6 felony if the pecuniary loss is at least fifty
- 28 thousand dollars (\$50,000).
- 29 (d) It is a defense to a prosecution under this section that the
- 30 damage, removal, or defacement was the result of repair,
- 31 renovation, replacement, or maintenance performed in good faith.



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 183, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 26, delete "Class A" and insert "**Class B**".

Page 2, delete line 27 and insert "**misdemeanor. However, the offense is:**

(1) a Class A misdemeanor if the pecuniary loss is at least seven hundred fifty dollars (\$750) but less than fifty thousand dollars (\$50,000); and

(2) a Level 6 felony if the pecuniary loss is at least fifty thousand dollars (\$50,000)."

and when so amended that said bill do pass.

(Reference is to SB 183 as introduced.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 8, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 183, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 35-43-2-2, AS AMENDED BY P.L.21-2014, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. (a) As used in this section, "authorized person" means a person authorized by an agricultural operation to act on behalf of the agricultural operation.

(b) A person who:

(1) not having a contractual interest in the property, knowingly or intentionally enters the real property of another person after having been denied entry by the other person or that person's agent;

(2) not having a contractual interest in the property, knowingly or

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intentionally refuses to leave the real property of another person after having been asked to leave by the other person or that person's agent;

(3) accompanies another person in a vehicle, with knowledge that the other person knowingly or intentionally is exerting unauthorized control over the vehicle;

(4) knowingly or intentionally interferes with the possession or use of the property of another person without the person's consent;

(5) not having a contractual interest in the property, knowingly or intentionally enters the:

(A) property of an agricultural operation that is used for the production, processing, propagation, packaging, cultivation, harvesting, care, management, or storage of an animal, plant, or other agricultural product, including any pasturage or land used for timber management, without the consent of the owner of the agricultural operation or an authorized person; or

(B) dwelling of another person without the person's consent;

(6) knowingly or intentionally:

(A) travels by train without lawful authority or the railroad carrier's consent; and

(B) rides on the outside of a train or inside a passenger car, locomotive, or freight car, including a boxcar, flatbed, or container without lawful authority or the railroad carrier's consent;

(7) not having a contractual interest in the property, knowingly or intentionally enters or refuses to leave the property of another person after having been prohibited from entering or asked to leave the property by a law enforcement officer when the property is:

(A) vacant **real property (as defined in IC 36-7-36-5) or a vacant structure (as defined in IC 36-7-36-6);** or

(B) designated by a municipality or county enforcement authority to be abandoned property or an abandoned structure (as defined in IC 36-7-36-1);

(8) not having a contractual interest in the property, knowingly or intentionally enters the real property of an agricultural operation (as defined in IC 32-30-6-1) without the permission of the owner of the agricultural operation or an authorized person, and knowingly or intentionally engages in conduct that causes property damage to:

(A) the owner of or a person having a contractual interest in the agricultural operation;



- (B) the operator of the agricultural operation; or
- (C) a person having personal property located on the property of the agricultural operation; or
- (9) knowingly or intentionally enters the property of another person after being denied entry by a court order that has been issued to the person or issued to the general public by conspicuous posting on or around the premises in areas where a person can observe the order when the property has been designated by a municipality or county enforcement authority to be a vacant property, an abandoned property, or an abandoned structure (as defined in IC 36-7-36-1);

commits criminal trespass, a Class A misdemeanor. However, the offense is a Level 6 felony if it is committed on a scientific research facility, on a key facility, on a facility belonging to a public utility (as defined in IC 32-24-1-5.9(a)), on school property, or on a school bus or the person has a prior unrelated conviction for an offense under this section concerning the same property. The offense is a Level 6 felony, for purposes of subdivision (8), if the property damage is more than seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000). The offense is a Level 5 felony, for purposes of subdivision (8), if the property damage is at least fifty thousand dollars (\$50,000).

(c) A person has been denied entry under subsection (b)(1) when the person has been denied entry by means of:

- (1) personal communication, oral or written;
- (2) posting or exhibiting a notice at the main entrance in a manner that is either prescribed by law or likely to come to the attention of the public; or
- (3) a hearing authority or court order under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36.

(d) A law enforcement officer may not deny entry to property or ask a person to leave a property under subsection (b)(7) unless there is reasonable suspicion that criminal activity has occurred or is occurring.

(e) A person described in subsection (b)(7) violates subsection (b)(7) unless the person has the written permission of the owner, **the** owner's agent, **an** enforcement authority, or **a** court to come onto the property for purposes of performing maintenance, repair, or demolition.

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(g) Subsections (b), (c), and (f) do not apply to the following:

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performance of official duties.

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(4) A person going on railroad property in an emergency to rescue a person or animal from harm's way or to remove an object that the person reasonably believes poses an imminent threat to life or limb.

(5) A person on the station grounds or in the depot of a railroad carrier:

(A) as a passenger; or

(B) for the purpose of transacting lawful business.

(6) A:

(A) person; or

(B) person's:

(i) family member;

(ii) invitee;

(iii) employee;

(iv) agent; or

(v) independent contractor;

going on a railroad's right-of-way for the purpose of crossing at a private crossing site approved by the railroad carrier to obtain access to land that the person owns, leases, or operates.

(7) A person having written permission from the railroad carrier to go on specified railroad property.

(8) A representative of the Indiana department of transportation while engaged in the performance of official duties.

(9) A representative of the federal Railroad Administration while engaged in the performance of official duties.

(10) A representative of the National Transportation Safety Board while engaged in the performance of official duties."

Page 1, line 3, delete "residential".

Page 1, line 7, delete "the residential".

Page 1, line 11, delete "residential".

Page 1, line 13, delete "residential".

Page 1, line 14, delete "residential".

Page 1, line 16, delete "residential".

Page 1, run in line 17 through page 2, line 1.

Page 2, line 1, delete "residential".

Page 2, line 2, delete "residential".

Page 2, line 3, delete "residential".

Page 2, line 5, delete "residential".

Page 2, line 7, delete "residential".



Page 2, delete lines 8 through 9.

Page 2, line 10, delete "(3) "Residential real" and insert **"(2) "Real"**.

Page 2, line 11, delete "residential".

Page 2, line 25, delete "residential".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 183 as printed January 14, 2016.)

WASHBURNE

Committee Vote: yeas 8, nays 0.

